

2/10/06 DRAFT

Tax Map Identification Nos.:

Spotsylvania County: _____

Stafford County: _____

Fauquier County: _____

Culpeper County: _____

Orange County: _____

:

Exempted from recordation tax under Virginia Code
' 58.1-811(A)(3), 58.1-811(D) and 10.1-1803 and from Circuit
Court Clerk=s fee under Virginia Code ' 17.1-266

DEED OF EASEMENT

THIS DEED OF EASEMENT, made and entered into this _____ day of _____,

2005, by and between the **CITY OF FREDERICKSBURG, VIRGINIA**, a municipal

corporation (hereinafter referred to as Athe City@ or Athe Grantor@); and _____

COUNTY, a Virginia political subdivision (hereinafter referred to as "the County"); the

VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF

VIRGINIA (hereinafter referred to as AVOF@), whose address is 203 Governor Street, Suite

317, Richmond, Virginia 23219; the **VIRGINIA BOARD OF GAME AND INLAND**

FISHERIES, an agency of the COMMONWEALTH OF VIRGINIA, whose address is 4010

West Broad Street, Richmond, Virginia 23230; and **THE NATURE CONSERVANCY**, a

nonprofit corporation organized under the laws of the District of Columbia (hereinafter referred

to as ATNC@), whose address is 490 Westfield Road, Charlottesville, Virginia 22903

(hereinafter referred to as collectively as Athe Grantees.@)

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, Sections 10.1-1700, *et seq.*, of the Code of Virginia (1950), as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth, and authorizes the designation of open-space land by public bodies, including municipalities and County, and the use of easements in gross to maintain the character of open-space land; and

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, Sections 10.1-1700, *et seq.*, of the Code of Virginia (1950), as amended) also authorizes any public body, including any county or municipality, to acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interest or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (' ' 10.1-1800, *et seq.*), as amended, declares it to be the public policy of the Commonwealth to “promote the preservation of open-space lands” and “to preserve the natural, scenic, historic, scientific, and open-space and recreational areas of the Commonwealth,” and authorizes the Virginia Outdoors Foundation “to hold . . . any real property or any estate or interest therein as may be necessary and proper in carrying into effect the purposes of the Foundation”; and

WHEREAS, the Virginia Board of Game and Inland Fisheries is a public body and, the Virginia Department of Game and Inland Fisheries (“DGIF”) is an agency of the Commonwealth of Virginia whose powers and duties include the conservation, protection, preservation and propagation of game birds, game animals, fish and other wildlife;

WHEREAS, the Virginia Department of Game and Inland Fisheries maintains an office in

Fredericksburg, and it was the state agency responsible to administer the State Scenic River designation of the mainstem of the Rappahannock River from 1985 until 2003; and

WHEREAS, _____ County is a public body as defined by the Open Space Land Act, with authority to accept an easement for the preservation of open-space land;

WHEREAS, the Virginia Conservation Easement Act (Virginia Code ' ' 10.1-1009, *et seq.*) authorizes certain charitable corporations, charitable associations, and charitable trusts declared exempt from taxation pursuant to 26 U.S.C. 501(c)(3) to hold a non-possessory interest in real property for purposes of retaining or protecting natural or open-space values of real property, assuring its availability for agriculture, forestal, recreational, or open-space use; protecting natural resources, maintaining or enhancing air or water quality, or preserving the historic, architectural, or archeological aspects of real property; and

WHEREAS, The Nature Conservancy meets the statutory requirements of Virginia Code ' 10.1-1009 for a holder of a perpetual easement under said Virginia Conservation Easement Act and has had a principal office in Virginia for more than five (5) years, as required by Virginia Code ' 10.1-1010(C); and

WHEREAS, The Nature Conservancy has extensive experience working in partnership with landowners to protect the natural resources on their property and currently holds conservation easements on 3,200,000 acres in the United States; and

WHEREAS, the United States Army Corps of Engineers, Norfolk District (“Corps”) administers the Virginia Aquatic Resources Trust Fund, which is one source of the consideration to the City for the conveyance of this easement; and

WHEREAS, in 1969, the City acquired property, consisting of 4,800 acres, more or less, and

1 situated primarily along the Rappahannock and Rapidan Rivers and their tributaries (hereinafter
2 referred to as “the Rivers”) in the City of Fredericksburg and in the Virginia Counties of
3 Spotsylvania, Stafford, Fauquier, Culpeper, and Orange from the Virginia Electric & Power
4 Company in order to protect the City’s public water supply (the “River Lands”); and

5 **WHEREAS**, the City seeks to protect most of the River Lands through a conservation easement
6 to be held by the Virginia Outdoors Foundation, the Board of Game and Inland Fisheries and
7 The Nature Conservancy, , the encumbered portion of the River Lands being hereinafter referred
8 to as “the Property;” and

9 **WHEREAS**, the City and _____ County wish for _____ County to be an
10 easement co-holder for that portion of the Property located in _____ County; and

11 **WHEREAS**, the City has sought for the past 35 years to protect said rivers and the River Lands
12 from environmental degradation, physical encroachments, waste, and other threats; and

13 **WHEREAS**, the mainstem of the Rappahannock River from its headwaters near Chester Gap to
14 the Ferry Farm-Mayfield Bridge has been designated as a component of the Virginia Scenic
15 Rivers System under Virginia Code ' 10.1-415; and

16 **WHEREAS**, Virginia Code §10.1-415 states that the designation of the Rappahannock as a
17 State Scenic River shall not preclude the Commonwealth, the City of Fredericksburg, or the
18 Counties of Stafford, Spotsylvania, or Culpeper from constructing or reconstructing any road or
19 bridge or from constructing any new raw water intake structures or devices, including pipes and
20 reservoirs but not dams, or laying water or sewer lines below water level; and

21 **WHEREAS**, it is the intent of the parties that this easement shall not preclude the construction,
22 maintenance, repair or reconstruction of roads or bridges, or the construction of new raw water

intake structures or devices, including pipes but not reservoirs or dams, and laying utility lines below water level, in accordance with the terms and conditions hereof; and

WHEREAS, the protection of the Property will provide riparian buffer preservation along approximately 115,389 linear feet (21.9 miles) of the Rappahannock River, 61,354 linear feet (11.6 miles) of the Rapidan River, and 169,922 linear feet (32.2 miles) of tributaries to these rivers (total of 65.7 miles), which lands are of national ecological and historic significance; and

WHEREAS, the Property provides excellent habitat for the bald eagle (*Haliaeetus leucocephalus*), as documented by the Virginia Division of Natural Heritage; and

WHEREAS, the permanent protection of the Property will also protect the habitat and spawning grounds for migratory fish species such as the American shad, which habitat was recently made accessible by the Corps of Engineers' upon removal of the Embrey Dam; and

WHEREAS, the Virginia Division of Natural Heritage has located element occurrences of the federally endangered dwarf wedgemussel (*Alasmodonta heterodon*) in reaches of the Rappahannock River that would be protected by this easement; and

WHEREAS, the City has taken various steps to manage and protect the River Lands through the adoption of ordinances and policies, including its Watershed Property Management Policy, to ensure that environmentally sensitive City-owned lands are protected for the use and enjoyment of future generations; and

WHEREAS, the comprehensive plans of the City and of the counties in which the River Lands lie, in effect as of the date of this easement, seek to protect the natural resources located within their jurisdictions and to preserve open space; and

WHEREAS, the Grantor and the Grantees wish to provide for the perpetual conservation of the

Property, with due recognition that the City and _____ County are units of local government, responsible to their citizens for services and infrastructure such as clean drinking water and roads, working under planning horizons of approximately twenty years; and

WHEREAS, the protection of water quality within the Chesapeake Bay watershed, and specifically along riparian corridors of significant waterways within the Bay watershed, such as the Rappahannock River and its tributaries, has been recognized by the Commonwealth of Virginia as requiring immediate governmental and private cooperative efforts to safeguard the water quality within these watersheds. This has included: (1) the General Assembly’s enactment of the Chesapeake Bay Preservation Act, (2) the Chesapeake Bay Local Assistance Board’s adoption of regulations concerning the use and development of certain lands within Tidewater Virginia called Chesapeake Bay Preservation Areas, which if improperly developed, may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries, (3) the Virginia Water Quality Improvement Fund, (4) the Commonwealth’s participation in the Chesapeake Bay Agreement (Section 10.1-2124 of the Code of Virginia, 1950, as amended) and (5) the Commonwealth’s participation in the Chesapeake 2000 Agreement; and

WHEREAS, the 2002-2003 Biennial Report of the Virginia Land Conservation Foundation, dated January 2004, states that meeting Virginia’s land preservation goals under the Chesapeake 2000 Agreement “requires the conservation of 432,535 acres by 2010 or 61,791 acres per year,” and protection of a substantial portion of the River Lands will make an immediate, substantial contribution toward Virginia’s goal; and

WHEREAS, the City seeks to cooperate with the Grantees in order to promote the following goals: (1) to protect the natural environment and habitats of the Property, including the

1 viewscape to and from the Rappahannock and Rapidan Rivers; (2) to protect the water quality of
2 the Rivers and to provide adequate public water supplies; (3) to protect the historic and
3 archeological resources located on the Property; (4) to prevent commercial development of the
4 Property; and (5) to allow reasonable use and enjoyment of the Property and the Rivers by the
5 City and the general public in a manner consistent with the other easement goals; These goals
6 are also referred to as “conservation values” throughout this document.

7 **NOW, THEREFORE,** in recognition of the foregoing and in consideration of the sum of
8 One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) cash in hand paid by
9 TNC to the City, and _____ (\$xxx) cash in hand paid by the County to the
10 City, the receipt and sufficiency of which are hereby acknowledged, and the additional
11 consideration set forth below, it is hereby agreed as follows:

12 **1. Recitals Incorporated.** The parties acknowledge and agree that the foregoing recitals
13 are hereby incorporated into this Deed of Easement and made a part hereof to the same extent as
14 if fully set forth herein.

15 **2. Permanent Easement Granted.**

16 (A) The City does hereby grant and convey to the the Virginia Outdoors Foundation, the
17 Virginia Board of Game and Inland Fisheries, and The Nature Conservancy a perpetual open-
18 space and conservation easement in gross over, and the right in perpetuity to restrict the use of,
19 the Property, consisting of four thousand two hundred thirty-two (4,232) acres, more or less, in
20 129 separate lots or parcels of record and more particularly described in “SCHEDULE AA@
21 attached hereto, as adjusted through the boundary line survey to be performed under paragraph
22 5(b)(2) and through any boundary line adjustments to be performed under paragraph 4((B)

(hereinafter referred to as “the Property.”)

(B) The City does hereby grant and convey unto _____ County a perpetual open space easement in gross over, and the right in perpetuity to restrict the use of, that portion of the Property that is situate within _____ County, consisting of _____ acres more or less, in _____ separate lots or parcels of record and more particularly described in “SCHEDULE A” as “Lands within _____ County,” as adjusted through the boundary line survey to be performed under paragraph 5(b)(2) and through any boundary line adjustments to be performed under paragraph 4((B). ”

(C) The easement herein conveyed shall be more fully described in a survey completed at the direction of The Nature Conservancy within twenty-four months of the execution of this Deed (hereinafter referred to as the Plat@). The Property shall be considered as a single parcel for the purpose of this easement, and, except as otherwise provided herein, the restrictions and covenants of this easement shall apply to the Property as a whole rather than as individual parcels.

3. Restrictions on Use and Development of the Property. The parties acknowledge and agree that the following restrictions are hereby imposed on the use and development of the Property pursuant to the public policies set forth above. The acts which the City covenants to do and not to do upon the Property, and the restrictions which the Grantees are hereby entitled to enforce, are and shall be as follows:

A. New Buildings, Structures, Facilities, and Equipment Permitted. No new buildings, structures, equipment, improvements (including roads and utilities) or other permanent facilities shall be built, constructed, or installed on the Property other than:

- 1 (i) the development of up to five new public river access points, including
2 non-motorized boat landings, gravel roads, primitive campsites, trails, historic
3 interpretation facilities, public parking areas, and related facilities .
4 (ii) the relocation or improvement of the existing access points or primitive
5 campgrounds at Ely's Ford, Mott's Run Reservoir, Blankenbaker and Hole in the
6 Wall, the Confluence, Prettyman's Camp, Snake Castle, and Deep Run ;
7 (iii) those erected and used by the City or other governmental entities for the
8 benefit of the public health, safety, or welfare, including for non-motorized
9 recreational, environmental, interpretive, or historic purposes; and
10 (iv) those whose development and use are consistent with the stated goals of this
11 easement.

12 B. Same; General Building Restrictions. Except as provided in Paragraph 3(D) below,
13 all new buildings, structures, equipment, improvements and facilities permitted under Paragraph
14 3(A) above shall be subject to the following restrictions:

15 (1) Except as provided in paragraph 7(F) below, the development footprint of all
16 such new development, in the aggregate, shall not disturb more than one percent
17 of the Property, which the parties agree shall be 42 acres. The City shall have the
18 right to allocate this one percent in its sole discretion. The development of this
19 land, pursuant to the terms of this easement, shall not be considered the
20 conversion or diversion of land from open-space land use.

21 (2) The term Adevelopment footprint@ shall mean the total area disturbed by the
22 cutting of trees, the grading, landscaping or other altering of land, and the

erection, construction, or installation of any building, structure, equipment, improvement, or facility. Acres disturbed for the construction of trails and primitive campsites shall not be counted in the development footprint total area;

(3) No single developed recreational site shall have a development footprint of more than three (3) acres;

(4) Hiking trails shall be unpaved trails constructed of permeable materials, with a maximum treadway width of three feet and a maximum two-foot wide additional shoulder on either side of the treadway;

(5) No building, structure, equipment, improvement or facility shall be visible at any time of year from the Rivers (except for road crossings as permitted below and except for structures and facilities permitted in C.1 and C.2 below);

C. Riparian Buffer Restrictions. The parties acknowledge and agree that a 100-foot-wide buffer area shall be established (Athe Riparian Buffer@). The Riparian Buffer shall consist of all land within one hundred (100) feet of the mean high water mark of the Rivers or any tributary stream. The purpose of the Riparian Buffer shall be to prohibit development along the Rivers and tributaries to the greatest extent practicable, to preserve the natural environment, and to protect the water quality of the Rivers. Except as otherwise provided under Paragraphs 3(D), (J) and (M) below, the following restrictions shall apply within the Riparian Buffer:

(1) No building, structure, equipment, improvement or facility, including any road, boat ramp, or parking area of any kind, shall be built within the Riparian Buffer except as expressly permitted herein. Erosion and sediment control shall be given primary consideration in the design,

1 location, construction and maintenance of any permitted building,
2 structure, equipment, improvement or facility.

3 (2) The following facilities and structures shall be permitted within the
4 Riparian Buffer:

5 a. New or relocated non-motorized boat landings designed to
6 minimize their impact on the Rivers. No such boat landing shall
7 exceed a structure size of 500 square feet.

8 b. Pedestrian hiking trails;

9 c. Primitive hike-in or canoe-in campsites designed to minimize
10 erosion and destruction of natural vegetation. No campsite shall
11 involve significant surface alteration or other disturbance of land;

12 d. Wetlands and streambank restoration activities and structures;
13 restoration of wildlife habitat, including control or removal of
14 invasive species;

15 e. Temporary structures, equipment, and facilities required for the
16 maintenance, repair, and reconstruction of existing bridges, located
17 adjacent to the right of way leading to the bridge; and

18 f. Signs not greater than 9 square feet in size to identify the location
19 of non-motorized boat landings.

20 (3) No motorized vehicles shall be permitted within the Riparian Buffer
21 except those related to safety, maintenance, emergency, law enforcement,
22 or as otherwise expressly permitted by the City.

1 D. New Public Water Supply Facilities The construction, operation, and maintenance of new
2 buildings, structures, equipment, or other permanent facilities owned and operated by the City or
3 other governmental entity on the Property and related to the production, transmission, or
4 treatment of public water supplies shall not be subject to the restrictions and limitations set forth
5 in this Paragraph 3. No dams, reservoirs, impoundments, or other facilities for the storage of
6 water shall be permitted on the Property. Outlet works and raw water intake structures and
7 devices associated with public water supply facilities shall be permitted on the Property.

8 E. Maintenance, Repair and Alteration of Existing Buildings, Structures, Equipment, and
9 Facilities. Nothing contained in this easement shall prevent the Grantor from repairing,
10 replacing, maintaining, altering, or improving any existing buildings, structures, equipment,
11 improvements, or facilities located on the Property as of the date of this easement.

12 F. Farming. Farming shall not be permitted within one hundred (100) feet of the Rivers or
13 any tributary stream, as depicted on the most recent U. S. Geological Survey topographical
14 quadrangle map.

15 G. Trash and Dumping. The accumulation, burial, burning, or dumping of trash, garbage,
16 refuse, or junk shall not be permitted on the Property. This restriction shall not prevent the City
17 from providing for trash receptacles or other means of encouraging clean and safe use of the
18 Property and the Rivers, nor prevent generally accepted agricultural or wildlife management
19 practices, such as creation of brush piles, composting, or the storage of farm machinery, organic
20 matter, agricultural products or agricultural byproducts on portions of the Property that are
21 farmed as of the date of the execution of this deed of easement.

22 H. Grading, Blasting and Other Land-disturbing Activities. No grading, blasting, or other

land-disturbing activities shall be permitted on the Property, except as needed to carry out permitted uses under the terms of this easement, to restore wetlands and streambanks, or to prevent erosion and sedimentation on the Property. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings, structures, equipment, and facilities. Mining and hydrocarbon extraction on the Property shall be prohibited.

I. Historic and Archeological Resources. No disturbance of historic or archeological resources shall be permitted except as authorized by the City in consultation with the Virginia Department of Historic Resources or other historic expert.

J. Paved Streets, Roads, Highways, Bridges, and Other Transportation Projects. No new paved streets, roads, highways, bridges, or other transportation projects shall be constructed on the Property except for:

(1) roads to access public water supply facilities permitted under subparagraph (D) of this paragraph (3) or as may be required for public safety to access those facilities permitted under subparagraph (A)(iii) of this paragraph (3); and

(2) those transportation projects involving a river crossing, certified and endorsed by a recorded vote of the governing bodies of the Grantor and each county within which the affected portion of the Property lies. Such certification shall consist of a finding by a two-thirds affirmative majority vote of each governing body that (a) there is no prudent and feasible alternative to using such portion of the Property (b) the project includes all reasonable actions, including location, landscaping, design and other topographic improvements, to minimize harm to the scenic, environmental, historic, habitat, and water quality values of the Property (c) the

1 project provides for the protection of alternate land adjacent to the Property if feasible without
2 the exercise of eminent domain, and (d) the Grantor and the Virginia Outdoors Foundation are
3 actively involved in the planning and design of any such mitigation measures. The land on
4 which the facilities are located shall not be deemed to be converted or diverted from open-space
5 land use under § 10.1-1704 of the Code of Virginia. Roads within the Property associated with
6 river crossings, including the bridge, must be oriented perpendicular to rivers and tributaries and
7 must be elevated above the river valley. ("Perpendicular" shall include an angle within 30
8 degrees of perpendicular.)

9 K. Signage. The display of billboards, signs, or other advertisements which are visible from
10 outside the Property shall not be permitted on or over the Property except to state the name and
11 address of the City or other property owner, to give directions, to regulate activities on the
12 Property, or to provide notice necessary for the protection of the Property. No such sign shall
13 exceed nine (9) square feet in size, except for informational kiosks.

14 L. Cell Towers. No cell or other telecommunications towers shall be permitted on the
15 Property.

16 M. Utility Easements.

17 (1) The City shall not grant any new easements for electric, gas, telephone, water,
18 sewer, or any other public or private utilities across the Property, except for: (a) utilities serving
19 facilities located on the Property, or (b) those utility projects involving a river crossing that have
20 been approved by the Virginia State Corporation Commission and certified and endorsed by a
21 recorded majority vote of the governing bodies of the Grantor and any county co-holder within
22 whose jurisdiction the affected portion of the Property lies. Such certification shall consist of a

1 finding by a two-thirds affirmative majority vote of each governing body that (1) the project
2 includes all reasonable actions, including location, landscaping, design and other topographic
3 improvements, to minimize harm to the scenic, environmental, historic, habitat, and water
4 quality values of the Property, (2) the project provides for the protection of alternate land
5 adjacent to the Property if feasible without the exercise of eminent domain, and (3) the Grantor
6 and the Virginia Outdoors Foundation are actively involved in the planning and design of any
7 such mitigation measures. The land on which the facilities are located shall not be deemed to be
8 converted or diverted from open-space land use under § 10.1-1704 of the Code of Virginia .

9 (2) The City may either grant new utility easements or modify or renew existing ones
10 for the replacement, alteration, upgrading, or relocation of existing facilities, or for the co-
11 location of new facilities within an existing easement, or new right of way approved under
12 paragraph 3(J). Any new or amended utility easement shall contain conditions designed to
13 minimize the easement's impact upon the conservation values of the Property.

14 (3) Utility crossings shall be co-located with existing road or utility crossings, or
15 directionally drilled or placed underground and under the river.

16 N. Access Easements. No new access easements or rights-of-way shall be granted by the
17 City across the Property if they materially diminish or impair the conservation values protected
18 by this easement.

19 O. Removal of Trees. There shall be no removal, destruction, cutting or clearing of trees
20 except: (1) to prevent the imminent loss of life or to remove a significant threat to life or
21 property; (2) to create emergency firebreaks; (3) to control disease; (4) to remove or control non-
22 native species; or (5) to conduct activities expressly permitted under Paragraph 3 of this

easement; provided, however, that no trees shall be cut to create additional farmland or pastureland.

4. Transfer and Subdivision of the Property.

A. The parties acknowledge and agree, as noted above, that for purposes of this easement the Property consists of a single parcel of four thousand two hundred thirty-two (4232) acres. It is the desire of the parties that the Property be maintained under public ownership to the greatest extent practicable. Therefore, the parties agree that the City shall not subdivide and transfer more than five (5) new parcels to a non-public entity or individual.

B. Boundary line adjustments with adjoining parcels of land shall be permitted in addition to any other subdivisions of the Property. The City shall notify the Grantees in writing prior to the completion of any such boundary line adjustment, which shall meet the following conditions: (1) the boundary line adjustment is necessary to resolve an existing boundary dispute between the City and an adjacent landowner, (2) it includes only the land needed for the settlement of the boundary, (3) the aggregate net loss of acreage through boundary adjustment deeds does not exceed 15 acres, or (a) the City includes the lost acreage within the one percent of lands permitted for development under paragraph 3(B)(1), (b) the City reimburses the Virginia Aquatic Trust Fund for the lost mitigation value, or (c) the City replaces the lost land with new land to be placed under this easement (with the approval of the Grantees);.

C. Prior to or at the closing of any fee simple sale, transfer, boundary line adjustment, or subdivision of the Property or any portion thereof, the City shall provide written notification thereof to the Grantees, along with a copy of the recorded deed and the survey, if any. Such deed shall contain a reference to this easement by deed book and page number or other

appropriate instrument number.

D. Right of first refusal. The City does hereby grant and convey to the County a permanent and irrevocable right of first refusal of all or any portion of the Property that the City may hereafter determine to sell to a non-public entity or individual, for the benefit of the County solely for public purposes. The City shall notify the County wherein such property lies in writing prior to the completion of any transfer of the Property, or any portion thereof, giving the County not less than one hundred twenty (120) days in which to exercise a right of first refusal hereby granted, whereby the County shall be first entitled to acquire the Property, or any portion thereof, contracted for transfer to any third party on the same terms as the Grantor has fixed or accepted with such third party,.

5. Inspection, Support, and Enforcement.

A. Inspection. Representatives of the Grantees and associated natural resources professionals may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the City Manager or his designee and any other affected owner of the Property.

B. Support.

1. The VOF, Virginia Department of Game and Inland Fisheries, and The Nature Conservancy agree to cooperate to create the Baseline Report documenting the conservation values of the Property, consulting with the City in its preparation. The Report shall be completed within two years of the execution of this easement. The Baseline Report will include aerial photography of the Property documenting existing conditions. The VOF, DGIF, and TNC agree to provide each of the easement holders ten copies of the Baseline Report at no charge.

1 2. The Nature Conservancy agrees to undertake, at its expense, a boundary line survey of the
2 Property, to be completed within two years of the execution of this easement. The Nature
3 Conservancy will provide each of the easement holders two copies of the final survey. In
4 addition, The Nature Conservancy agrees to prepare and submit a monitoring plan to City
5 Council for review within two years of the execution of this easement. The Nature Conservancy
6 agrees to conduct periodic overflights of the Property for monitoring purposes.

7 3. The VOF, the Virginia Department of Game and Inland Fisheries, and The Nature
8 Conservancy agree to provide occasional, reasonable assistance to the City with respect to the
9 long-term stewardship of the Property. Such assistance may take the form of providing advice
10 on such matters as wildlife habitat, water quality, wetlands, or similar issues. The assistance
11 may consist of directing the City to additional resources, such as funding sources, training
12 sources, conservation groups, and scientific resources. Assistance from the Virginia Department
13 of Game and Inland Fisheries will include law enforcement assistance.

14 4. _____ County pledges to cooperate with the City with respect to public
15 safety, emergency services, planning and zoning the Property in a manner consistent with the
16 terms of this Easement. The County promises the City reasonable assistance to the extent
17 County resources are available for monitoring the Property and for response to requests for
18 assistance to address the misuse of the property by third parties and trespassers.

19 5. The parties agree that the relative responsibilities of the Virginia Outdoors Foundation, the
20 Virginia Department of Game and Inland Fisheries, The Nature Conservancy [and the County]
21 will be more fully developed from time to time through the use of bi-lateral or multi-lateral
22 agreements.

1 C. Enforcement.

2 1. The Grantor and Grantees shall endeavor to resolve all disputes by negotiation.

3 In the event the Grantor and Grantees are unable to resolve any dispute by negotiation, the
4 parties shall engage in non-binding mediation in the City of Fredericksburg (or as the parties
5 may otherwise agree) with a mediator jointly selected.

6 2. Should the dispute remain unresolved more than 30 days after the conclusion of
7 non-binding mediation, then the Virginia Outdoors Foundation may bring an action against the
8 City for an injunction seeking compliance with the terms of this easement, including the
9 restoration of the Property to its status prior to the violation. The easement holders agree that,
10 notwithstanding any law to the contrary, only the Virginia Outdoors Foundation shall have the
11 right to commence litigation to enforce the terms of this easement against the City.

12 3. In case of a dispute involving a significant or substantial violation of the terms of this
13 easement, where negotiation and mediation have failed to resolve the dispute, and where the
14 Virginia Outdoors Foundation refuses or fails to bring an action against the City under paragraph
15 5(C)(2) above, then the Corps may bring an action against the City for an injunction seeking
16 compliance with the terms of this easement, including the restoration of the Property to its status
17 prior to the violation.

18 3. Nothing herein shall be construed to entitle any Grantee or the U.S. Army Corps
19 of Engineers to institute any enforcement proceedings against the Grantor for any changes to the
20 Property due to causes beyond the Grantor's control, such as changes caused by fire, flood,
21 storm, earthquake or the unauthorized wrongful acts of third persons.

22 D. Enforcement Against Trespass or Encroachment.

The City and the Grantees and the U.S. Army Corps of Engineers shall have the right to bring any action at law or in equity to enforce against trespass or encroachment, specifically including the right to require restoration of the Property to a condition of compliance with the terms hereof. The enforcing party or parties shall have the right to seek reimbursement from such party or parties for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney=s fees, in addition to any other payments ordered by such court. In the event that a court of competent jurisdiction finds that The Nature Conservancy is not a valid holder of this easement, such organization shall nevertheless enjoy rights as a third-party beneficiary to bring enforcement actions against third parties hereunder, provided that the City, its successors and assigns, have agreed in writing to the bringing of such action(s).

6. Amendment.

A. Purpose. This easement may be amended for the following purposes:

- (i) Correction of a typographical error or other minor mistake.
- (ii) Addition of land to the conservation easement.
- (iii) Minor boundary adjustments.
- (iv) Clarification of provisions in dispute.
- (v) Allow uses or technology not in existence at the time of the granting of the easement.
- (vii) Add restrictions.

B. Process.

An amendment for any of the purposes listed above shall be approved by mutual written consent of the City and the Grantees.

1 **7. Miscellaneous.**

2 A. Vested Rights. Nothing in this easement shall restrict or infringe upon any existing lease,
3 license, easement, or other legal right or privilege in the Property granted by the City, either
4 express or implied, to any third party. In addition, this easement shall be subject to all covenants,
5 easements, encumbrances or other restrictions of record.

6 B. Successors and Assigns. The covenants, terms, conditions and restrictions contained in
7 this easement shall be binding upon, and inure to the benefit of, the parties hereto and their
8 respective successors and assigns and shall continue as a servitude running in perpetuity with the
9 Property; provided, however, that the TNC shall not have the right to transfer or assign its
10 interest in this easement to any entity other than the Commonwealth of Virginia. Assignment of
11 this easement by VOF, without the City's consent, shall be limited to the assignment to the
12 Commonwealth of Virginia pursuant to Section 10.1-1801(1) of the Code of Virginia (1950), as
13 amended. The Board of Game and Inland Fisheries shall not assign this easement without the
14 City's consent.

15 C. Severability. If any provision of this easement or the application thereof to any person or
16 circumstance is found to be invalid, the remaining provisions of this easement shall not be
17 affected thereby.

18 D. No Right of Public Access. Although this easement in gross will benefit the public as
19 described above, nothing herein shall be construed to convey to the public a right of access to or,
20 use of, the Property. The City hereby retains the exclusive right to control such access and use of
21 the Property, subject to the terms hereof.

1 E. Additional Protective Measures. Nothing in this easement shall prohibit the City from
2 granting additional preservation easements, not in conflict with the terms of this easement.

3 F. Reimbursement. In the event roads or utilities involving a river crossing as allowed under
4 this easement are constructed in an area not designated by the City as within the development
5 area permitted under Paragraph 3(B)(i), the entity seeking such river crossing shall reimburse the
6 Virginia Aquatic Resources Trust Fund for the mitigation value attributable to the development
7 footprint of that construction.

8 G. Entire Agreement. This deed of easement sets forth the entire agreement of the parties
9 with respect to the easement and supersedes all prior discussions, negotiations, understandings,
10 or agreements relating to the easement. This easement does not replace, abrogate, or otherwise
11 supersede any federal, state, or local laws applicable to the Property.

12 H. Authority. The easement herein conveyed is granted pursuant to Ordinance No. 06-____,
13 duly adopted by the City Council of the City of Fredericksburg, Virginia, by a recorded vote of
14 at least three-fourths of its members on _____, 2006, and which directed the City
15 Manager to affix his signature hereto.

16 Acceptance of this conveyance by VOF is authorized by Virginia Code ' 10.1-1801, as
17 evidenced by the signature of its Executive Director hereto.

18 Acceptance of this conveyance by The Nature Conservancy is authorized by Virginia
19 Code Title 10.1 Chapter 10.1, as evidenced by the signature of Michael L. Lipford, its Vice-
20 President and Executive, hereto.

21 Acceptance of this conveyance by _____ County is authorized by Virginia Code
22 Title 10.1, Chapter 17, the Open Space Land Act, and by a recorded vote of its Board of

Supervisors on _____.

Acceptance of this conveyance by the Virginia Board of Game and Inland Fisheries is authorized by Virginia Code Title 29.1, Chapter 1, “Administration of Game and Inland Fisheries,” and by a recorded vote of its Board on _____.

WITNESS the following signatures and seals.

CITY OF FREDERICKSBURG, VIRGINIA,
A municipal corporation

BY:

_____(SEAL)
Phillip. L. Rodenberg, City Manager

ATTEST:

Deputy City Clerk

Approved as to form:

Kathleen Dooley, City Attorney

VIRGINIA OUTDOORS FOUNDATION,
An agency of the Commonwealth of Virginia

BY: _____(SEAL)

1 G. Robert Lee, Executive Director

2
3 Approved as to form:

4
5 _____
6 Frederick S. Fisher,
7 Special Assistant Attorney General
8
9

10
11
12
13
14 **THE NATURE CONSERVANCY,**
15 A District of Columbia nonprofit corporation
16

17
18 BY _____(SEAL)
19 Michael L. Lipford, Vice-President
20 and Executive Director
21

22
23
24
25 **VIRGINIA BOARD OF GAME AND INLAND**
26 **FISHERIES**
27

28
29 _____
30 Colonel Gerald Massengill, Interim Director

31 Approved as to form:

32
33 _____
34 Roger Chaffe,
35 Senior Assistant Attorney General
36

37
38 _____ **COUNTY, VIRGINIA**
39 a political subdivision of the Commonwealth of
40 Virginia
41

42 By: _____
43 _____, County Administrator
44

1 Approved as to form:

2
3 _____
4 _____, County Attorney
5
6

7 COMMONWEALTH OF VIRGINIA
8 CITY/COUNTY OF _____, to wit:
9

10 I, _____, a Notary Public for the Commonwealth aforesaid, hereby
11 certify that Phillip L. Rodenberg, City Manager of the City of Fredericksburg, Virginia,
12 Grantor, personally appeared before me this day and acknowledged the foregoing instrument.
13

14 WITNESS my hand and official seal this _____ day of _____, 2006.
15
16

17 _____
18 Notary Public

19 My commission expires: _____
20
21

22
23 COMMONWEALTH OF VIRGINIA
24 CITY/COUNTY OF _____, to wit:
25

26 I, _____, a Notary Public for the Commonwealth aforesaid, hereby
27 certify that G. Robert Lee, Executive Director, Virginia Outdoors Foundation, Grantee,
28 personally appeared before me this day and acknowledged the foregoing instrument.
29

30 WITNESS my hand and official seal this _____ day of _____, 2006.
31
32

33
34 _____
35 Notary Public

36 My commission expires: _____
37
38

39
40
41
42 COMMONWEALTH OF VIRGINIA
43 CITY/COUNTY OF _____, to wit:
44

1 I, _____, a Notary Public for the Commonwealth aforesaid, hereby
2 certify that Michael L. Lipford, Vice-President and Executive Director of The Nature
3 Conservancy, a District of Columbia non-profit corporation, Grantee, personally appeared before
4 me this day and acknowledged the foregoing instrument.

5
6 WITNESS my hand and official seal this _____ day of _____, 2006.

7
8
9
10 _____
11 Notary Public

12 My commission expires: _____
13
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21

22 COMMONWEALTH OF VIRGINIA

23 CITY/COUNTY OF _____, to wit:
24

25 I, _____, a Notary Public for the Commonwealth aforesaid,
26 hereby certify that _____, County Administrator of Spotsylvania County, Virginia,
27 Grantee, personally appeared before me this day and acknowledged the foregoing instrument.

28
29 WITNESS my hand and official seal this _____ day of _____, 2006.

30
31
32
33 _____
34 Notary Public

35 My commission expires: _____
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